Cases Concluded under Internal Complaint Handling Programme

AIRPORT AUTHORITY ("AA")

Case No. OMB 2004/3408

AA – airport management – failing to stop touting activities by taxi drivers at the airport terminal

The complainant was approached by a man at the arrival hall of the airport terminal offering discounted taxi fares. He rejected the offer but the man continued to follow and harass him. He considered AA to have failed in its duty to stop touting activities.

2. AA apologised to the complainant. It had conducted such measures as daily anti-touting operations. It had also been discussing with the Transport Department, the Police and representatives of some 40 taxi associations about tightening control. Joint operations with the Police had resulted in the interception of many touting activities.

3. The Authority also launched publicity campaigns regularly, including announcement through the public address system and distribution of leaflets, to advise airport users against accepting illegal services provided by touts.

4. The tout in this case had been arrested and sentenced to one month's imprisonment, the maximum term under the Airport Authority Bylaw. Meanwhile, AA was studying the possibility of raising the penalty for further deterrent.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2004/3063

FEHD – complaint handling – failing to properly handle repeated complaints about water dripping from an air-conditioner above the complainant's flat

The complainant allegedly had telephoned FEHD a number of times to complain about water dripping from an air-conditioner of a flat upstairs. However, she did not receive any response and the Department did not contact her for follow-up. The problem persisted for more than a year as a result.

2. FEHD records showed that the complainant had called the Department several times in June and July 2003 regarding the problem. FEHD had promptly sent staff to conduct an inspection each time. Although they did not see water dripping, they still advised the owners of the flats upstairs to ensure proper maintenance of their air-conditioners and the rubber hoses, to avoid nuisance caused by water dripping. No sign of water dripping was detected in subsequent inspections from August to November and the complainant indicated that the situation was satisfactory.

3. In July 2004, the complainant complained again about the same problem. FEHD staff conducted a site inspection and found only the air-conditioner of the flat immediately above connected to a drip tray and a rubber hose to collect water droplets into a bucket. Later, the complainant made the same complaints but still FEHD staff found no water dripping when they went over to investigate. The complainant agreed to call the Department at once when she saw water dripping from the air conditioner.

4. In early September, FEHD staff went to the complainant's flat 15 minutes after receiving her call but still did not find any water dripping from the air conditioner upstairs. Nevertheless, as it was still connected to a drip tray and a rubber hose, the staff advised the owner to make improvement.

5. Against the background above, FEHD had actually followed up on the complaints. It was just that no water was found dripping despite repeated inspections. Nevertheless, its staff only informed the complainant's mother of the result after each inspection but did not reply to the complainant. They undertook to contact the complainant herself in future.

6. On the other hand, we noticed that FEHD staff only jotted down "morning" or "afternoon" as the time of inspection in the records. At our suggestions, the Department issued new guidelines to remind staff to record the exact time and all details of visits for easier follow-up.

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2004/4374

Lands D – assignment of banner site – allowing a District Councillor to assign a designated roadside spot to another party for displaying a publicity banner

The complainant alleged that a District Lands Office under Lands D had allowed a District Councillor to assign a designated roadside spot to another party for displaying a publicity banner. Moreover, the officer answering her complaint had failed to be impartial and to clearly identify himself as a public officer.

2. On referral by this Office, Lands D reviewed the case against its Implementation Guidelines and confirmed that such assignment had contravened the Guidelines. On the Department's advice, the party concerned removed the banner. As regards the officer's misinterpretation of the Guidelines and failure to clearly identify himself, the Department had cautioned him and issued an apology to the complainant.

REGISTRATION AND ELECTORAL OFFICE ("REO")

Case No. OMB 2004/3619

REO – voting procedures – unreasonable refusal by staff at a polling station to accept the complainant's driving licence as proof of his identity

On 12 September 2004, the complainant went to cast his vote in the Legislative Council Election. He presented his driving licence but staff at the polling station allegedly refused to issue a ballot paper as his driving licence carried no photograph and could not prove his identity.

2. The REO "Guide on Voting" (the "Guide") sent to voters stated that a voter must bring along his/her "Hong Kong Identity Card ("HKID") or other identity document when visiting the polling station in person". However, it did not mention that such "other document" must carry a photograph of the bearer. The complainant, therefore, considered the action of the staff concerned inappropriate.

3. REO explained that in general only a document with a photograph of the bearer can be regarded as proof of identity. Staff at polling stations could identify from a HKID with a photograph whether or not the bearer was indeed the voter. However, this was not the case with a driving licence without a photograph of its bearer. The decision not to issue a ballot paper to the complainant was, therefore, appropriate.

4. Nevertheless, REO undertook to revise the Guide to read "a voter must bring along his/her HKID or other identity document bearing a photograph of the voter when visiting the polling station in person". It also apologised in writing to the complainant for the inconvenience caused.

Cases Concluded under Rendering Assistance/Clarification

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT ("AFCD") AND EFFICIENCY UNIT ("EU")

Case Nos. OMB 2004/0169; OMB 2004/1608

AFCD – processing of licence application – delay over the complainant's application for Animal Trading Licence

EU – handling of enquiry – providing wrong information on the status of the application

The complainant applied to AFCD for an Animal Trading Licence in mid-October 2003 to sell birds in his pet products shop. He alleged that despite three site inspections, the Department had still not issued the licence by the end of December. When he telephoned the AFCD hotline to enquire

about progress, the staff first replied that the licence had been approved, but later that his application was still being processed. The licence was eventually issued to him in January 2004.

2. The complainant alleged that there had been delay on the part of AFCD in processing his application and that its staff had given him wrong information.

3. AFCD explained that as the shop was located inside a commercial building, assessment procedures for the application were different from ordinary cases. Besides site inspections to ensure that the shop facilities met the standard requirements, the Department had to check whether the shop would contravene any rules or regulations of that commercial building and to consider any additional clauses for inclusion in issuing the licence. Consequently, it took longer to process the complainant's application.

4. This Office considered AFCD to have been proactive in processing the complainant's application. To prevent avian flu and to protect public health, the Department was justifiably cautious in processing the licence application. It was a prudent and reasonable move.

5. The AFCD hotline was actually answered by staff of the Integrated Call Centre of EU under the Government Secretariat. EU admitted that the staff answering the complainant's call had misread the e-mail message from the Department in response to the enquiry and mistaken the licence to have been issued. As she discovered her mistake 20 minutes later and called the complainant at once, this should not affect his application. EU had instructed the staff concerned to handle enquiries carefully.

6. AFCD and EU had apologised to the complainant and undertook to improve their communications.

DEPARTMENT OF HEALTH ("DH")

Case No. OMB 2004/1402

DH – dental treatment – (a) providing pulp treatment to the complainant's daughter without her prior consent; (b) failing to check if her daughter was allergic to medication before treatment; and (c) allowing an unqualified dental therapist to perform the operation on her daughter

The complainant's daughter joined the School Dental Care Service ("SDCS") offered by DH and had a check-up at its dental clinic. The dental therapist, on detecting decay in three of her upper teeth requiring fillings, performed oral hygiene instruction, tooth brushing under supervision and filling of the decayed teeth. When the decay was removed, the teeth were found to require pulpotomy. The first stage of pulpotomy was then performed by a senior dental therapist.

2. DH records showed that the complainant had been informed of the scope of the service and composition of its professional team when her daughter enrolled in the scheme. Pulp treatment was within the scope of basic dental treatment. By signing the Application and Consent Form for School Dental Care Service, the complainant had consented to dental treatment considered necessary for her daughter. However, she did not indicate that her daughter was allergic to any medication. The pulpotomy was performed by a qualified professional with proper authorisation. DH had also informed the complainant of the dental treatment performed via her daughter's SDCS handbook and the "post pulp treatment care" instruction card.

3. This Office considered that DH had followed established procedures. Nevertheless, relying simply on the parents' blanket consent, given at the beginning of the school year, to all basic dental treatment may not be satisfactory. To protect young patients' rights, The Ombudsman suggested that DH inform parents beforehand of any irreversible treatment to be performed on their children and that parents provide their children's latest health condition when deliberating and deciding on any treatment. DH agreed to enhance public education and publicity and strengthen communication with parents on this.

FIRE SERVICES DEPARTMENT ("FSD")

Case No. OMB 2004/2670

FSD – complaint handling – (a) not taking the initiative to inform the complainant of its follow-up action; (b) providing inaccurate information in its reply; and (c) failing to respond properly to the complainant's telephone enquiries

The complainant, representing a property management company, alleged that the main door of a flat in a private building had been replaced with a wooden board, constituting a fire hazard. The complainant had telephoned to report to FSD in early January 2004, but the Department had not taken the initiative to inform him of its follow-up action, or conducted inspections conscientiously. FSD indicated in its reply of 1 June that inspections had been carried out. Nevertheless, the complainant indicated that there were discrepancies between its inspection report and the actual situation. He was also dissatisfied that an officer of FSD's Building Improvement and Support Division ("Building Division") had not properly handled his company's telephone enquiries.

Complaint (a)

2. FSD classified the case as a "fire hazard" after a site inspection in early January and sent an advisory letter to the flat owner, followed by a "Fire Hazard Abatement Notice" in early April requiring him to remove the hazard in 30 days. On 11 May, the Building Division found that a solid wooden door had been installed, thus abating the fire hazard.

3. FSD staff had twice replied to the telephone enquiries from another staff member ("Ms A") of the property management company in late January and early April. As subsequent action would involve legal procedures and the privacy of a third party, details were not divulged to the complainant in accordance with usual practice.

4. This Office considered that FSD had followed departmental guidelines in handling the complaint. In its letter of 1 June 2004, it had also explained to the complainant the reasons for not providing details of its action. However, the Department agreed that the officer concerned was perfunctory and too passive in responding to telephone enquiries. It had, therefore, given him appropriate instructions.

Complaint (b)

5. An FSD officer had conducted an inspection on 19 February. As he could not contact the flat owner immediately, he wrote his inspection report on 24 February and noted that as the inspection date. FSD had given him proper instruction to prevent recurrence.

6. Furthermore, the complainant alleged that the flat owner had not installed a solid wooden door by 12 May. FSD had checked its records and confirmed that the door had been installed on 30 April. Nonetheless, workers had removed it several times between 11 and 27 May to facilitate renovation of the flat.

Complaint (c)

7. Ms A had called the FSD hotline in late January and complained against an officer of the Building Division for failing to refer her enquiry to the subject officer and to reply to her before the end of the day as promised. The Acting Station Officer had immediately explained and apologised to her and thought that her dissatisfaction had been addressed. FSD had instructed its staff to handle complaints more carefully.

8. FSD had set up a working group after the incident to review the procedures, guidelines and staff training relating to the handling of public enquiries. New guidelines had since been drawn up.

HIGHWAYS DEPARTMENT ("Hy D"), HOME AFFAIRS DEPARTMENT ("HAD"), LANDS DEPARTMENT ("Lands D"), PLANNING DEPARTMENT ("Plan D"), TRANSPORT DEPARTMENT ("TD") AND ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD")

Case Nos. OMB 2004/1682 - 1687; OMB 2004/1706 - 1717;
OMB 2004/1724 - 1729; OMB 2004/1742 - 1747;
OMB 2004/1754 - 1759; and others

Hy D, HAD, Lands D, Plan D, TD and EPD – land use – failing to consult local residents before changing the land use of a site and causing them nuisance

Some residents of a private housing estate ("Estate A") complained against the above departments for failing to consult local residents before using a site nearby ("Site B") as a truck loading/unloading area and depot for an infrastructural development project ("the Project") elsewhere, which caused them nuisance.

Actions by the Departments

2. Precast segments for a flyover under the Project were to be delivered from the Mainland to Hong Kong by barge. Hy D, therefore, needed a barging point to receive them before transportation to the works area. Prior to designating Site B as the barging point and depot, the Department had, through HAD's District Office ("DO"), consulted the District Council ("DC"), local organisations and neighbouring housing estates. It had accommodated some of their demands by retaining the existing activities on site and reducing the area of the depot. It had also responded to each of the four written submissions from residents and the Customer Service Centre of Estate A.

3. As regards transportation of the segments, Hy D, after consulting the DC Traffic and Transport Committee ("TTC") and the residents, initially arranged to deliver them first to an intermediate site, then to the works site at night via Street C where Estate A was situated. As residents in the vicinity of Street C were still concerned about the impact of such arrangement, Hy D decided to deliver the segments by sea and other roads instead. A trial run proved to be smooth, witnessed by members of a monitoring group under TTC and residents' representatives. The route was, therefore, adopted and any impact on the residents eliminated.

4. DO had consulted DC and residents several times in different ways regarding these arrangements and conveyed the views to the departments concerned. DO staff had in fact sought the views of the residents of Estate A both before (through the estate sales office) and after they moved in.

5. Lands D was responsible for approving land use applications. Upon receipt of Hy D's application for using Site B as a barging point and depot for three and a half years, Lands D consulted HAD, Plan D, TD and EPD. It met with them, residents and District Councillors. Taking into account the views received, Lands D cut the period of use by one year and reduced the site area so that the existing activities could continue.

6. Plan D did not object to Hy D's application, since under its policy, short-term use for less than five years need not conform to the land use designated by the Outline Zoning Plan.

7. TD had no objection to Hy D's application because Street C had sufficient spare capacity for the delivery vehicles. Moreover, Hy D had reserved enough space for parking and cargo handling and had designated vehicular access points so as to minimise the impact on neighbouring roads. In fact, the delivery of segments by land had never adversely affected the traffic flow on Street C.

8. EPD had issued an environmental permit for the Project to Hy D with conditions including restrictions on the time of operation, the equipment to be used and the arrangements for storage. As the works conformed to the requirements of the technical memorandum issued under the Environmental Impact Assessment Ordinance, EPD believed that these measures were enough to contain the impact on the environment. Subsequently, on Hy D application, EPD issued an amended permit to enable the retention of the existing activities on site.

Observations and Opinions

9. This Office considered that the six departments had followed their policies and procedures in handling the change of land use of Site B. Local residents had been duly consulted and their views largely accepted as illustrated by the reduction of the site area and the period of use as well as the change of the route for delivery. As a result, the residents of Estate A and others along Street C were no longer affected by the traffic.

HOME AFFAIRS DEPARTMENT (“HAD”)

Case No. OMB 2004/2666

HAD – financial assistance to mutual aid committee – refusing to reimburse the expenses of a mutual aid committee

A mutual aid committee (“MAC”) complained that the notes to the “Application for Financial Assistance by Mutual Aid Committee” were misleading and that HAD had unreasonably rejected its application for quarterly reimbursement of expenses.

2. Having set up its office in October 2003, the MAC claimed reimbursement of expenses amounting to $1,999.60 from HAD in January 2004. This was reimbursed in full in mid-February. Nevertheless, its application for reimbursement of expenses in January to March made in April 2004 was rejected.

3. HAD explained that its financial assistance to a MAC was up to $1,000 per quarter. In the case of setting up a new office, a MAC may claim reimbursement up to $2,000 for two quarters at the same time. As the complainant had been given such financial assistance for two quarters in February, no further reimbursement could be made for expenses of the quarter January to March.

4. HAD admitted that the notes to the application form were not clear and had accordingly revised the wording. It had also apologised to the complainant.

HONGKONG POST ("HK Post")

Case No. OMB 2003/4173

HK Post – payment service – failing to keep proper record of payment received and to respond to the complainant's enquiries

The complainant claimed that he had received a ticket for violation of traffic regulations and paid the fine at a post office the next day. However, he later received a Notice Demanding Payment of Fixed Penalty from the Police, saying that the fine had not been settled. He enquired with the Central Traffic Prosecutions Bureau of the Police and the post office concerned. As he had lost his receipt, both departments indicated that they could not follow up his enquiries and he had to pay the fine once more. Aggrieved, he lodged a complaint with this Office.

2. Investigation by HK Post found that the complainant's vehicle had actually been issued with two tickets for illegal parking at different times at the same location on the same day. HK Post explained that post office staff handling payments would input relevant data of a bill such as the serial number, the amount billed, the payment date, the receiving post office and the actual amount received into the PayThruPost computer system. However, the system did not record the vehicle registration mark. In this light, as the complainant was not able to produce the receipt, HK Post could not follow up further.

3. Meanwhile, the Central Traffic Prosecutions Bureau indicated that if an offender had settled the fixed penalty, it would not have issued a demand note. As the complainant was served with two fixed penalty notices, he had to pay twice.

HOSPITAL AUTHORITY ("HA")

Case No. OMB 2004/1401

HA – medical prescription – directing the orthopaedists at a public hospital not to prescribe certain medication while other specialists were allowed to do so

When the complainant had a follow-up consultation at an HA hospital, the orthopaedist told him that a certain drug might help his condition but the hospital did not have the supply. The complainant later learned from the hospital's pharmacy that the drug was available but orthopaedists could not prescribe it while other specialists could. He considered that the orthopaedist had cheated him. He also complained that the hospital's reply did not provide the contact telephone number of the signing officer.

2. HA explained that the orthopaedists at that hospital were no longer prescribing the drug because it had no specific medical efficacy. The Authority indicated that it was a clinical decision made by the

orthopaedics department of the hospital, not an administrative directive. Nevertheless, the hospital apologised to the complainant for any misunderstanding caused.

3. HA further stated that the complainant could contact the signing officer by calling the main switchboard at the hospital. The hospital undertook to provide the telephone number of the Patient Relations Officer in all future correspondence with patients for easy contact.

4. This Office would not comment on the orthopaedics department's decision not to prescribe the drug because it was purely a clinical judgement and not an administrative matter. Nevertheless, we believed that the orthopaedist had not cheated the complainant.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2003/4209

HD – recladding of external walls – (a) failure to reclad the external walls of a building with tiles of a similar colour, thereby affecting its appearance; and (b) delay in handling the complainant's enquiries

HD had reclad the external walls of a building in a public housing estate with tiles of a different colour, giving the excuse that tiles of the original colour were out of stock. The complainant complained to HD by e-mail about this and other estate management issues. He was not satisfied with the Department's preliminary reply and failure to follow up on his second enquiry.

Complaint (a)

2. HD explained that as it had trusted its contractor to exercise "professional judgement" and choose tiles of a "similar" colour, it did not specify the colour of the tiles in the contract. HD held that the tiles chosen by the contractor complied with the specifications and looked "similar" to the original colour of the building. HD considered it acceptable for the contractor to launch the works as soon as possible, for fear of seepage and structural damage to the building, rather than taking more time to source tiles of the original colour.

3. We noted that HD had indeed not specified the colour of the tiles. While we appreciated the need to complete the works as soon as possible, the appearance of the building should not be sacrificed.

4. This Office considered that HD had relied too much on the "professional judgement" of the contractor. HD should learn from the incident and take the initiative to restore the walls with appropriate tiles or explore other possible remedies with the residents.

Complaint (b)

5. HD received the complainant's first e-mail enquiry in late November 2003 and e-mailed him in acknowledgement the next day. Meanwhile, his enquiry was referred to the property management company for action. The company replied in early December. As the complainant considered his questions not fully answered, he sent another e-mail to HD asking for more details. The Department sent him an acknowledgement the next day and a substantive reply on 29 December.

6. As HD had complied with its performance pledge by replying all within 21 days, this Office considered that there had been no delay.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/0095

HD – maintenance service – failing to monitor a shopping centre management company properly, thus causing delay in repairs

The complainant claimed that she had fallen from the staircase of a shopping centre in a housing estate. She attributed the accident to a damaged escalator having been out of service for several months so that she had to use the staircase instead. She had asked the management company to repair the escalator as soon as possible. However, it ignored her request. She, therefore, lodged a complaint against HD for failing to monitor the management company properly, resulting in delay in repairs.

2. According to HD, after the escalator was damaged in an accident, the single operator of the shopping centre and the management company notified the maintenance contractor for repairs. However, the contractor did not follow up, so the single operator issued a reminder to the contractor. Meanwhile, notices were posted near the escalator explaining the suspension of service and suggesting use of the lift adjacent to the shopping centre.

3. HD further explained that the escalator had remained out of service for more than two months because the maintenance contractor had failed to place orders for the spare parts early and the single operator and management company had not followed up the case closely. In this connection, HD had instructed the management company to follow up any future maintenance works actively to ensure quick restoration of services.

4. HD's appraisal report on the management company showed that the Department had recorded the company's dereliction of duty for future contract consideration. However, we considered that the single operator should also be penalised. Furthermore, as HD had been well aware of the prolonged disruption of escalator service, it should have taken the initiative and urged the management company to expedite repairs.

IMMIGRATION DEPARTMENT ("Imm D") AND LEGAL AID DEPARTMENT ("LAD")

Case Nos. OMB 2004/2347 - 2348

Imm D – marriage registration application – failing to provide reasons in writing for refusal to process the complainant's application for marriage registration

LAD – legal aid application – failing to take the initiative to understand Marriage Registry's reasons for refusal

The complainant married a Thai national in Thailand in 1991 and then returned to settle in Hong Kong. In 2002, he obtained a Certificate of Registration of Divorce ("the Certificate") from the Thai Consulate General in Hong Kong certifying that he had divorced his wife.

2. In January 2004, the complainant applied at a Marriage Registry ("the Registry") of Imm D to marry again. However, the Registry rejected the Certificate as a valid proof of his divorce and refused to process his application. The complainant was advised to apply to the court for a divorce decree first.

3. In early February 2004, the complainant applied to LAD for legal aid for his divorce petition but was refused because the Certificate was documentary proof of his divorce. LAD considered it unnecessary for him to get a divorce decree.

4. In June 2004, the complainant applied for marriage registration with the Registry again but was refused for the same reason. He again applied for legal aid for divorce petition but LAD asked him to obtain from the Registry in writing its reasons for refusing to process his application for marriage registration.

5. The complainant then telephoned the Registry for assistance. Imm D staff asked to speak to the responsible LAD lawyer direct but LAD staff refused to do so. The Registry, therefore, refused to give the reasons in writing as they could not ascertain what information was required by LAD.

6. The complainant considered both the Registry and LAD to be shirking their responsibility. He felt "caught in the middle" by them, each holding a different interpretation of the law.

7. On the basis of legal advice from the Department of Justice, Imm D considered that a divorce registered at the Thai Consulate General in Hong Kong could not be regarded as valid. The complainant was required to apply to the court in Thailand or in Hong Kong to obtain a divorce decree before he could register his marriage in Hong Kong.

8. This Office considered the Registry staff to be acting prudently in accordance with the law. It was not unreasonable for them to refuse to give "reasons in writing" as they did not know what was required by LAD. On the other hand, LAD had failed to take the initiative to understand the

reasons held by the Registry. It was indeed bureaucratic and passive, showing a lack of consideration for clients.

9. LAD issued guidelines to instruct staff to be more proactive in processing legal aid applications and to take the initiative in assisting applicants. It also issued a written apology to the complainant.

JUDICIARY

Case No. OMB 2004/0776

Judiciary – delivery of documents – delay in delivering an order to the complainant so that she was unable to appeal in time

The complainant was the defendant in a small claims case. As she did not attend the hearing, the Adjudicator at the Small Claims Tribunal ("the Tribunal") ruled in favour of the claimant. The complainant alleged that since the Tribunal had delayed the delivery of the order to her, she was not able to lodge an appeal within the seven-day period. The complainant was also dissatisfied with the Tribunal for the errors in three letters sent to her. She considered this to be negligence of the staff.

2. The Judiciary clarified that the Tribunal had followed established procedures to refer the notices and order to the relevant officer for verification and for the Adjudicator's approval. After the signature by the Adjudicator, the documents were issued to both the claimant and the defendant concurrently. There was no delay in sending them to the complainant.

3. According to records, the Adjudicator allowed her appeal out of time on condition that she first paid a $25,000 deposit to the court. The Judiciary indicated that the complainant's appeal was dismissed because she had failed to pay the deposit. It had nothing to do with the date the order was issued. As regards the errors in its letters to the complainant, the Judiciary admitted negligence. The staff concerned were duly advised and an apology was issued to the complainant.

4. As it was impossible to ascertain when the Adjudicator had actually signed the order, this Office could not comment whether there was delay in delivery. The Judiciary Administrator was urged to review and improve the workflow for the serving of orders by the Tribunal to ensure delivery to both parties before the appeal period expired. If necessary, they should consider amending the legislation to extend the time limit.

LABOUR DEPARTMENT (“LD”)

Case No. OMB 2004/1462

LD – training scheme – mistakenly issuing a registration card to someone not eligible for the Graduate Employment Training Scheme

The complainant, a property services company, alleged that it had applied to LD on 3 May 2004 for a training allowance when it employed Madam A, holder of a valid registration card issued by the Department under the Graduate Employment Training Scheme (“the Scheme”). However, it was informed on the following day that it could not get the allowance because Madam A was not eligible for the Scheme and that the registration card had been issued by mistake.

2. The Scheme aimed to assist university graduates of 2003 to secure employment but did not cover holders of a master’s degree. Employers who provided on-the-job training to fresh university graduates would be paid a monthly training allowance of $2,000 for each trainee engaged, up to a maximum of six months. The Scheme operated for 12 months and was discontinued on 30 June 2004.

3. When Madam A applied for enrolment in the Scheme at an LD office on 30 April 2004, she insisted on being issued a registration card at once to save her the trouble of collecting it later. Without following the normal procedures, a clerical staff issued the card before her application was approved. That clerical staff reminded Madam A not to use the card until her application had been approved.

4. That day, LD found that Madam A had a master’s degree and was, therefore, not eligible. An officer immediately called her to say that her application had been rejected. LD also sent her formal notification on 3 May.

5. Upon receipt of the application for training allowance for Madam A, LD informed the complainant on the same day by telephone that she was not eligible for the Scheme and subsequently sent a letter of rejection. Meanwhile, LD also wrote to Madam A requesting her to return the registration card as soon as possible.

6. LD emphasised that this was an isolated incident and had apologised to the complainant.

7. The Ombudsman suggested that LD remind staff to observe departmental guidelines and work procedures.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2004/1284

LCSD – library management – failing to handle properly a reader's request to call the police

While reading in a public library one evening over a weekend, the complainant found a girl making a lot of noise. He asked the girl's father to restrain his daughter but was assaulted. His request to the library staff to call the police was refused. He eventually called the police himself. He complained that LCSD had failed to manage its library effectively and was shirking responsibility.

2. LCSD explained that staff and security guards were deployed to patrol and maintain order in the library during opening hours. There were guidelines on this for staff. The Department explained that the direct supervisor, a professional Librarian, had been out for meal break at the material time. The staff had failed to report the incident immediately to other supervisory officers on duty (Assistant Librarian/Librarian) and had mishandled it. Apart from sending the complainant a written apology and arranging additional staff to patrol and maintain order during peak periods on weekends, LCSD had also reminded frontline staff of the proper procedures to handle such incidents as disputes among library users.

3. Nevertheless, this Office considered that LCSD's instructions to staff that the duty assistant librarian/librarian must be notified and prior approval of the senior librarian/chief librarian obtained before reporting any case to the police too rigid and bureaucratic. We urged the Department to review such procedures and guidelines to be more flexible.

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY ("MPFA")

Case No. OMB 2004/0516

MPFA – MPF contributions – failing to monitor properly an approved trustee such that the complainant was unable to claim back the default MPF contributions from his ex-employer

The complainant stated that he had lodged a complaint with MPFA in June 2003 alleging that from October 2002 to May 2003, his ex-employer had not paid his employee's contributions to a mandatory provident fund ("MPF") scheme but continued to deduct $1,000 from his salary every month.

2. The complainant alleged that MPFA had failed to monitor properly the approved trustee of a provident fund scheme as well as the contributions by the ex-employer such that he was not able to claim back the default MPF contributions.

3. MPFA explained that according to its established policy, default cases would be handled according to different categories, viz. “non-payment” or “discrepancy”. For “non-payment” cases, a Notice of Default Contribution would be issued to request employers to pay all outstanding contributions plus a surcharge within a specified period upon notification by the trustee. Special MPFA teams would inspect frequent defaulters for enforcement purposes.

4. As regards “discrepancy” cases, MPFA investigations indicated that most of them were due to employers’ unintentional miscalculation. After clarification by the trustees, most employers would rectify the mistakes. MPFA, therefore, did not issue notices to the employers demanding contributions. However, MPFA would handle promptly any complaints received from the employees. It would also continue to monitor the situation through the trustees. With frequent cases of “discrepancy”, MPFA would initiate an inspection and issue reminders or warning letters to the employers concerned.

5. In this case, between October 2002 and May 2003, the approved trustee had complied with the law and made monthly submissions to MPFA on the ex-employer’s default contributions. It had issued written notices to require him to rectify the mistakes. However, as there was an error in the trustee’s computer system, the “non-payment” of the ex-employer had been wrongly categorised as “discrepancy”. As a result, MPFA had not issued a Notice of Default Contribution to or levied any surcharge on the ex-employer.

6. MPFA stated that well before the trustee submitted the reports on the ex-employer’s “discrepancy”, it had suspected there might be a problem in the trustee’s definition of “discrepancy” cases. Subsequently, MPFA conducted a survey by questionnaire among all the trustees in November 2002 to gauge their understanding of the definition. After analysing the data collected, MPFA decided to hold meetings with the trustees on their different interpretations of “discrepancy” in February 2003. However, the meetings were postponed due to the outbreak of the Severe Acute Respiratory Syndrome (“SARS”).

7. In late May 2003, when SARS subsided, a meeting was held with the trustee in which MPFA highlighted that the categorisation of “discrepancy” was incorrect. The trustee was urged to rectify its computer system immediately and to submit cases of “non-payment”, which had previously been wrongly reported as “discrepancy”, for appropriate enforcement action.

8. This Office considered that MPFA had complied with the legislation in monitoring the operations of trustees to gain a full picture of employers’ contributions. Meanwhile, it had also followed up the trustee’s incorrect categorisation of “discrepancy” cases. Although MPFA was well aware of the trustee’s misinterpretation, the situation was beyond its control as rectification of the computer system would take time whilst the outbreak of SARS was an unfortunate incident. Hence, there was no maladministration on the part of MPFA.

9. This Office urged MPFA to follow up promptly all “non-payment” cases wrongly reported as “discrepancy” to safeguard employees’ interests. Meanwhile, as a deterrent, it should consider levying appropriate penalties on the trustee for their mistakes.

RADIO TELEVISION HONG KONG ("RTHK")

Case No. OMB 2003/4304

RTHK – distribution of prizes – (a) delay in notifying the complainant to collect his prize; and (b) failing to respond to his enquiries

A Mainlander had won a prize in a radio programme of RTHK in August 2003. He complained that RTHK had delayed notifying him of the arrangement for collecting his prize and failed to respond to his telephone and e-mail enquiries.

2. RTHK explained that it had notified all Mainland winners by e-mail after the programme and asked them to provide personal particulars and indicate their choice of prize collection points. It was not until March 2004 that RTHK finally obtained the information from all winners. With the assistance of the programme sponsor, the prize collection points were confirmed and letters issued to the winners. The sponsor informed RTHK in April that the complainant had collected his prize.

3. RTHK staff could not recall whether the complainant had made any enquiries by telephone. Without independent evidence, this Office could not comment on this point.

4. The officer responsible for distribution of prizes said that she had sent several replies to the complainant's e-mail enquiries. However, as the e-mails had been deleted, RTHK was unable to ascertain what had actually occurred.

5. This Office also noticed that the e-mail notification to the complainant had been issued via the officer's personal e-mail account and she had not informed her successor about that e-mail. We considered such practices improper and suggested that RTHK formulate guidelines on the use of e-mail at work and remind staff to prepare detailed notes when handing over duties.

6. RTHK undertook to work out proper procedures accordingly.

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2003/3341

TD – unauthorised bus services – failing to take effective measures to stop unauthorised free bus services

The complainant's company operated green minibus services. He lodged a complaint with this Office alleging that there were non-franchised buses providing unauthorised free services. He had complained to TD, but no definite reply was given. Moreover, the Department had not taken any effective measures to stop such services.

2. TD explained that upon receipt of the complaint, it had requested the complainant to participate in a discussion to realign those two free bus routes, to achieve a “win-win” situation as free bus services could help boost the economy. After the realignment, a licence was granted to permit the operator concerned to run those two routes for five months.

3. However, the operator continued the services after the period expired and ignored TD’s warning. TD thus initiated an inquiry while the operator sought judicial review. Eventually, the operator proposed an out-of-court settlement.

4. TD said that enforcement action had been taken in accordance with existing regulations. However, the procedures involved took much time and resources. Although TD could prosecute the bus operator, it must first prove that the same driver had driven the same bus within 12 months providing more than 14 days of free bus service, which was difficult to establish. Even if the Department invoked the Road Traffic Ordinance to conduct an inquiry, it would still require evidence from a survey of more than 14 days, which would also be labour-intensive and time-consuming.

5. TD indicated that consideration had been given to streamline the procedures and amend the law so as to control such situation more effectively. Proposals for improvement would be put to a working group under the Transport Advisory Committee.

6. This Office considered that basically TD had handled this complaint according to established procedures. However, the result was not satisfactory. The free bus services had actually been in operation for over two years, but TD had not been able to solve the problem. As such problems might arise elsewhere, TD should expedite action on it. We suggested that the Department seek legal advice again to clarify whether it could in fact institute criminal prosecution against unauthorised bus operators within the existing law. If so, prosecution should be stepped up for deterrence. In addition, we advised the Department to reflect the difficulties encountered to the working group for the formulation of a more appropriate and practical policy.